

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION
2:08 cr12-5**

UNITED STATES OF AMERICA,)	
)	
Vs.)	ORDER
)	
MATTHEW STEVEN WATTY,)	
)	
Defendant.)	
)	

THIS MATTER is before the court upon the government's Motion to Amend Indictment (#54). In the motion, the government request that the bill of indictment in this matter be amended, pursuant to Rule 7(c)(3) (citation error) of the Federal Rules of Criminal Procedure. While the motion seeks to amend the indictment, only bills of information may be amended and only then as provided under Rule 7(e) of the Federal Rules of Criminal Procedure. Having considered the government's Motion to Amend Indictment and reviewed the pleadings, and it appearing that the government should file a notice of correct citation, the court will deny the motion inasmuch as neither the government nor the court can amend an indictment. The government will, however, be granted leave to file and serve upon the defendant a notice to point out the correct statutory violation for the crime alleged in Count Two of the bill of indictment. This procedure has been used in this court in past cases where a bill of indictment correctly charges an offense but incorrectly references the

wrong statute citation which was allegedly violated by the defendant. The court specifically notes that the motion of the government states that the Assistant United States Attorney has spoken to defense counsel and that defense counsel has no objection.

The undersigned refers the government to file 1:07cr112 wherein the government was allowed to file a Notice of Citation under similar circumstances to show the correct statutory reference to a count alleged in a bill of indictment.

ORDER

IT IS, THEREFORE, **ORDERED** that the government's Motion to Amend Indictment (#54) is **DENIED** without prejudice as to filing an appropriate notice and serving such upon the defendant as soon thereafter as is possible.

Signed: June 10, 2008

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

